

AO 243 (Rev. 2/95)

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>UNITED STATES DISTRICT COURT</b>		District	<b>RECEIVED AND FILED</b>
Name of Movant William Soto-Beniquez		District of Puerto Rico	
Prisoner No. 52697-004		Case No. 201 MAR 9 7 PM 9:35	DRD
Place of Confinement U.S. Penitentiary, Atlanta, Georgia (USA)		CLERK'S OFFICE U.S. DISTRICT COURT SAN JUAN, P.R.	
UNITED STATES OF AMERICA		V. WILLIAM Soto-Beniquez	
		(name under which convicted)	

**MOTION**

- Name and location of court which entered the judgment of conviction under attack U.S. District Court, District of Puerto Rico (San Juan)
- Date of judgment of conviction June 25, 1999 (Verdict) March 28, 2001 (Sentence)
- Length of sentence Life without Parole
- Nature of offense involved (all counts) 21 U.S.C. §848 Continuing Criminal Enterprise

## 5. What was your plea? (Check one)

- (a) Not guilty ☒  
 (b) Guilty ☐  
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

## 6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒  
 (b) Judge only ☐

## 7. Did you testify at the trial?

Yes ☐ No ☒

## 8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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AO 243 (Rev. 2/95)

9. If you did appeal, answer the following:

(a) Name of court U.S. Court of Appeals, First Circuit #01-1619

(b) Result Judgment Affirmed

(c) Date of result November 20, 2003 U.S. v. Soto-Beniquez 356 F.3d (1st.Cir.)

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court U.S. Supreme Court

(2) Nature of proceeding Petition for Writ of Cert.

(3) Grounds raised Appellate Issues

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Petition denied

(6) Date of result June 1, 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

AO 243 (Rev. 2/95)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☐(5) Result N/A(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☐No ☐

(2) Second petition, etc.

Yes ☐No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Ineffective Assistance of trial and sentencing counsel

Sixth Amend. U.S. Const. Strickland v. Washington, 416 U.S. 688 (1984)

Supporting FACTS (state *briefly* without citing cases or law)

See: attached sheet pg. 5-A

B. Ground two: Ineffective Assistance of Appellate counsel Fifth and

Sixth Amends. U.S. Const. Evitts v. Lucey, 469 U.S. 387 (1985)

Supporting FACTS (state *briefly* without citing cases or law)

See: attached sheet pg. 5-A

C. Ground three: Violation of Due Process of Law Fifth Amend. U.S.

Const. Prosecutorial Misconduct.

Supporting FACTS (state *briefly* without citing cases or law)

See: attached sheet pg. 5-A

28 U.S.C. §2255 Motion  
U.S.A. v. Soto-Beniquez, 3:97-CR-076-DRD  
Attached Page 5-A

Supporting Facts:

Movant discovered that his petition for writ of certiorari to the U.S. Supreme Court was denied June 1, 2004, on January 24, 2005. Immediately thereafter movant sent a letter to counsel (Marlene Aponte-Cabrera) requesting his criminal files and transcripts to perfect his pro se §2255 motion before one-year deadline. (See: Exhibit A). Movant mailed a second letter dated February 7, 2005. (See: Exhibit B). As of this date movant has not recieved his documents.

Without any criminal files, transcripts, or other records movant can not formulate claims for post-conviction relief or support such with the record/transcripts of proceedings. Movant has less than four (4) months to file his §2255 motion due to counsel's failure to notify movant of the Supreme Court's denial of petition for writ of certiorari. Therefore, movant files this bare-bones §2255 motion and moves this Court to (1) order counsel to forward to movant his criminal files and (2) allow movant to amend this §2255 motion pursuant to Rule 15, F.R.Civ.P. to submit facts and references to record supporting claims for relief.\*

\*

Movant has filed herewith his pro se "Motion For Order Directing Counsel To Forward Criminal Files to Movant."

AO 243 (Rev. 2/95)

D. Ground four: Unconstitutional Sentencing Guidelines and deprivation  
of notice and trial by jury beyond reasonable doubt. U.S. v. Booker

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

See: attached pg. 5-A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

(1) Ineffective Counsel

(2) Constitutional Ruling by Supreme Court

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

(c) At trial Marlene Aponte-Cabrera, Esq. MSC 128, Sierra Morena  
271, Las Cumbres, San Juan, PR 00926

(d) At sentencing Same as above

AO 243 (Rev. 2/95)

(e) On appeal Same as above(f) In any post-conviction proceeding pro se(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

Puerto Rico Commonwealth

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

X X X X X X X X X X X X X

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

2-22-05  
(Date)\_\_\_\_\_  
/s/\_\_\_\_\_  
Signature of Movant